SINGAPORE REPORTS

PETER CHI MAN KWONG & ANOR. v. RONALD LEE KUM SENG

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Rajah JJ.) October 26, 1984]

[Singapore – Civil Appeal No. 6 of 1984]

Company Law – Examination of legal adviser of company regarding affairs of company – Application by Liquidators of Company – Whether allowed – Companies Act (Cap. 185), s. 249(1).

Legal Profession – Legal adviser to Company – Whether he be examined on oath concerning affairs of Company – Companies Act (Cap. 185), s. 249(1) – Evidence Act (Cap. 5), s. 128(1).

Upon the application of the appellants, the Liquidators of Lee Wah Cane Furniture Pte. Ltd. (the Company), under section 249 of the Companies Act (Cap. 185), the Asst. Registrar ordered that the respondent, Advocate and Solicitor of Singapore, "be examined on oath concerning the promotion, formation, trade dealings, affairs or property of the company". The respondent's appeal against the Asst. Registrar's Order was allowed by the High Court (see [1984] 1 M.L.J; 156). The Liquidators appealed against the said Order.

Held, allowing the appeal: (1) section 128(1) of the Evidence Act does not confer immunity on any advocate and solicitor who had acted for a company from being examined on an application by the company under section 249 of the Companies Act (Cap. 185). The privilege of confidentiality is intended for the protection of the clients of an advocate and solicitor who is not permitted to disclose the same except those matters which fall within the provisoes (a) and (b) of section 128(1) of the Evidence Act;

(2) the court was completely satisfied that the proposed examination was requested by the Liquidators because it was necessary for them to investigate the matter and discharge their duties.

Cases referred to:

(1) *In re South Essex Estuary & Reclamation Company* (1869) 4 Ch. App. 215.
(2) *Re A Debtor (No. 472 of 1950)* [1958] 1 All E.R. 581.
(3) *Re Spiraflite Ltd.* [1979] 2 All E.R. 766, 769, 771 & 772.

COURT OF APPEAL.

Wong Meng Meng for the appellants.
G. Raman for the respondent.

Cur. Adv. Vult.

Rajah J. (delivering the Judgment of the Court): Upon the application of Peter Chi Man Kwong and Robin Ian Rawlings, the Liquidators of the abovementioned company ("the Company"), under section 249 of the Companies Act (Cap. 185), the Assistant Registrar ordered that the abovementioned Ronald Lee Kum Seng (Ronald Lee), Advocate and Solicitor of Singapore, "be examined on oath concerning the promotion, formation, trade dealings, affairs or property of the company."

Section 249(1) of the Companies Act provides as follows:–

"249(1). The Court may summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company.

Against this Order Ronald Lee appealed to the High Court for an order that the said Assistant Registrar's Order against himself for examination on oath be discharged or otherwise varied or modified.

The case for Ronald Lee before the High Court was put forward on three grounds:

(1) That he was entitled to the privilege of professional communication under section 128(1) of the Evidence Act (Cap. 5);

(2) That the Liquidators were contemplating instituting other legal proceedings against his clients and were seeking under guise of this examination to obtain evidence in respect of contemplated legal proceedings; and

(3) That he had already assisted the Liquidators as a solicitor within the bounds of professional privilege.

Section 128(1) of the Evidence Act is in the following terms:–

"128(1). No advocate or solicitor shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such advocate or solicitor by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure –

(a) any such communication made in furtherance of any illegal purpose;

(b) any fact observed by any advocate or solicitor in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment."

The learned Judge was of the view that on the first ground alone the Order of the Assistant Registrar should be discharged. "There are, however," he went on to say "in this case further grounds. Counsel for Ronald Lee is right in saying that the Liquidators are attempting to use this section in an improper way as a means of aiding them in other litigations. In my view Ronald Lee has assisted the Liquidators within his capacity and within the bounds of professional privilege." He then, in the exercise of his discretion, discharged the Order, made by the Assistant Registrar under section 249 of the Act, in respect of Ronald Lee.

At the conclusion of the hearing of the appeal before us, we allowed the appeal with costs. We restored the Assistant Registrar's Order. We now set out the facts and the reasons for our decision.

Ronald Lee is an advocate and solicitor practising under the style of Messrs. Ronald Lee & Company. He was the legal adviser of the Company since its incorporation on March 31, 1979. He was also one of the legal advisers in Singapore of InterLee (Holdings) Limited, a company incorporated in Hong Kong which wholly owned the Company. He had also acted for the directors of the Company in their personal capacities.

The Company traded in rattan and furnitures. Its Chairman was one Lee Peng Fong whose son, Richard Lee, was the Managing Director. Its General Manager was one Daniel Yap Neng Hua and the Company's Secretary was one Miss Yap Mee Hoe.

By an Order of the High Court made on March 5, 1983 in Suit No. 1003 of 1983 the Liquidators before us were, on the application of Midland International Trade Services (U.K.) Limited, appointed Receivers and Managers of the Company. As such Receivers and Managers, the Liquidators discovered that the Company was owing the colossal sum of $51 million to 23 banks. It would appear that most of the banks did not know of the loans given by the other banks. The Liquidators were unable to locate and interview the principal officers and employees of the Company whom we have mentioned. It was also discovered that all the accounting records and books of the Company were missing. As a result, the Liquidators were unable to ascertain the utilisation of the loans.

The Liquidators found out that many companies which were subsidiaries of InterLee (Holdings) Limited were set up in Hong Kong and the United States of America. They had reason to believe that the Hong Kong incorporated companies were nominees of the Company or of the controllers of the Company and these nominee companies in Hong Kong were involved in "various highly questionable transactions" in connection with the Company's sales of rattan and furniture to the Hong Kong nominee companies.

It would appear that the ownerships of various businesses or properties, being of a doubtful nature, required investigations by the Liquidators. Some of the directors of the Company owned immovable properties in Singapore. But the Liquidators believed that the funds for the purchase of all or some of these properties had come from the Company. For instance, No. 10-C Jervois Road, which were registered as owned by Lee Peng Fong and his wife, Choy Kum Kiew, should have been but was not transferred to the Company.

Now, Ronald Lee is also the brother-in-law of one Frederick Lee who is the son of the Chairman of the Company.

On the basis of the facts narrated above, the Liquidators believed that Ronald Lee will be able to assist them by giving information regarding the promotion, trade, dealings, affairs or property of the Company.

In opposing the application Ronald Lee deposed to the fact that on April 7, 1983 he had granted to the Solicitors of the Liquidators inspection of his office files relating to the Company. On April 8, 1983 the Solicitors for the Liquidators asked for a letter written by one Gene Liaw to Richard Lee in connection with another company by the name of Lee Wah (U.K.) Ltd. and certain documents in the secretarial file of Y.E. Yee Management Services. Ronald Lee refused on

the ground that the letter of Gene Liaw related to another company and was unconnected with the affairs of the Company and on the ground that the documents in the secretarial file belonged to Y.E. Management Services to whom the application should be made. On the same day, the Solicitors of the Liquidators also requested for the files relating to a property known as No. 10-C Jervois Road, Singapore which they alleged were beneficially owned by the Company. Ronald Lee in his reply pointed out that he had acted for the legal owners of the property, Lee Peng Fong and Madam Choy Kum Kiew, and that having given inspection of the file to them and since they had made copies of the documents in the file, he claimed that he was not obliged to hand over the file relating to the property.

In the circumstances, Ronald Lee asserted that he had given his "fullest co-operation and assistance" and that he had disclosed all documents relating to all matters of the Company.

Ronald Lee then went on to assert that the Liquidators' motive was to compel him to disclose to the Court matters concerning Lee Peng Fong's and Lee Tong Fook's dealings in Inter-Lee (Holdings) Ltd. and in its subsidiaries and also matters in connection with the sale of No. 10-C Jervois Road, Singapore. As regards the disclosure of matters concerning Lee Peng Fong's and Lee Tong Fook's dealings outside their capacity as officers or otherwise agents of the Company, Ronald Lee claimed that he was obliged to keep his clients' confidence and was unable to disclose anything without their consent. Since he has not received the consent he was not compellable as a witness to be examined and he relied on section 128(1) of the Evidence Act.

We do not agree with the learned Judge's application of section 128(1) of the Evidence Act. Having acted for the Company, Ronald Lee could not set up the plea of professional privilege as against the Liquidators of the Company which continues to exist in law as the same legal entity until its dissolution, notwithstanding the appointment of the Liquidators. Their appointment merely rendered the board of directors of the Company *functus officio*, with the directors having only such residual powers as might be approved by the committee of inspection or, in its absence, by the creditors of a company: see section 261(4) of The Companies Act, Cap. 185.

In our view, section 128(1) of the Evidence Act does not confer immunity on any advocate and solicitor who had acted for a company from being examined on an application by the company under section 249 of the Companies Act, Cap. 185. The privilege of confidentiality is intended for the protection of the clients of an advocate and solicitor who is not permitted to disclose the same except those matters which fall within provisoes (a) and (b) of section 128(1) of the Evidence Act.

It is of interest to note that in *In re South Essex Estuary & Reclamation Company*[1] , the solicitors of a company were compelled by a court order pursuant to the official liquidator's application similar to the one before us to produce the documents relating to the company, without prejudice to their lien for costs. Lord Hatherley, L.C., at p. 217 said: "The solicitors in this case were persons capable of giving information within the 115th section (which is similar to our section 249 of The Companies Act, Cap. 185), and production must be ordered, but the Court would be very careful not to go beyond the powers conferred by the section." It is right to point out that the question of professional privilege did not arise in that case. Further, we refer to *Re A Debtor (No. 472 of 1950).*[2] It was held that the solicitor of a debtor who was later adjudged a bankrupt could not set up against the trustees in bankruptcy any privilege. We are of the view that the same principle applies so far as the examination of Ronald Lee is concerned in regard to the matters of the Company.

We now turn to Ronald Lee's contention that he might be examined on matters of his other clients such as Lee Peng Tong and Lee Tong Fook. The short answer is to be found in the terms of the application of the Liquidators, which are that Ronald Lee "may be examined on oath concerning the promotion, formation, trade, dealings, affairs or property of the company ..." If any question in his examination goes outside the terms of the order of Court, and he is prohibited by section 128(1) of the Evidence Act to disclose any matter of his other clients, his objection may be taken before the examining Judge who will undoubtedly consider the matter, in as much as it will be open to those appearing for the Liquidators to contend that the prohibition under section 128(1) of the Evidence Act does not apply or, indeed, that either or both the provisoes to the section applies or apply. It is not

permissible for Ronald Lee to speculate that his examination will necessarily be outside the terms of the order of Court nor to anticipate that he is not permitted to disclose matters of his other clients under section 128(1) of the Evidence Act.

We also refer to Ronald Lee's argument that he had already assisted the Liquidators within the bounds of professional privilege. The Liquidators obviously think otherwise. We need not say anything further except to state that it is premature at this stage to say one way or the other whether he has disclosed everything in regard to the matters of the Company. The answer to that question must await the outcome of the examination.

We would finally refer to Ronald Lee's submission that the Court should not exercise its discretion under section 249 of the Companies Act, Cap. 185 on the ground that the Liquidators were seeking unfairly to scrutinise in advance the evidence against other parties against whom they were contemplating legal actions, in which case, he might be an important witness for the prospective defendants for whom he had acted. We totally reject this submission. We have in this case some most unusual features. The Company is in debt to the colossal extent of $51 million. All accounting records and the principal officers and employees of the Company have disappeared The Liquidators are perfectly entitled to conclude that a massive fraud has been perpetrated and they are anxious to ascertain the *modus operandi.* In discharge of their heavy responsibilities they have expressed the view that it was necessary to examine several persons, including Ronald Lee. Their views are entitled to be accorded due weight. We are completely satisfied that the proposed examination was requested by the Liquidators because it was necessary for them to investigate the matter and discharge their duties, one of which is to decide whether any action should be brought, and if so, against whom. In the circumstances of this case, it is not a valid objection to say that an examination may yield information which might be helpful in a future action: see *Re Spiraflite Ltd.*[3] , per Megarry J. (as he then was) at p. 769b, p. 771c to f and h j and p. 772 a b.

Appeal allowed.

Solicitors: *Shook Lin & Bok; G. Raman Singh & Partners.*

RE ESTATE OF SITI BTE. NAYDEEN

[O.C.J. (Chua J.) October 17, 1984]
[Singapore – Originating Summons No. 237 of 1984]

Islamic Law – Will – Validity of – Consent of heir.

In this case the testatrix had made a will appointing the defendant, her daughter-in-law to be the sole executrix and bequeathing all her real and personal properties to her as sole beneficiary of her estate. The deceased had two sons, Masdawood bin Ahdan, the husband of the defendant, who predeceased her and Mansor bin Ahdan, who survived her. The question for decision in this case was whether Mansor (who had since died) had consented to the whole estate being given to the defendant. The plaintiffs, who were the children of Mansor, sought certain declarations with respect to the will.

Held: (1) under the Islamic Law the will is valid only to the extent that the defendant is entitled to one third of the estate of the testatrix and the remaining two-thirds share goes to the estate of Mansor, unless Mansor in his lifetime had consented to the whole estate being given to the defendant;

(2) in this case on the balance of probabilities Mansor did not so consent.

ORIGINATING MOTION.

Miss Halimah bte. Abdul Jalil for the plaintiffs.
Mohamed Kamil Suhaimi for the defendant.

Cur. Adv. Vult.

Chua J.: By this Originating Summons the plaintiffs seek certain declarations with respect to the Will of Siti bte Naydeen and with respect to the estate of Mansor b. Ahdan deceased.

Siti bte Naydeen (the testatrix) died on the November 11, 1971, leaving a son Mansor b. Ahdan (Mansor) surviving her. The textatrix left a Will dated the November 16, 1965, (the Will) appointing the defendant, Zaleha bte Ibrahim, the sole executrix and bequeathing all her real and personal properties to the defendant as the sole beneficiary of her estate.

The defendant is the daughter-in-law of the testatrix, being the wife of Masdawood b. Ahdan (Masdawood) who died on the August 24, 1964.

The testatrix was at the date of her death the owner of the property known as No. 117, Lorong H, Telok Kurau, built on Lot 2611 of Mukim 26, Grant No. 1, District of Siglap (the said property). That was her only property. The